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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,260	06/29/2005	Scott McGrane	HO-P03082US0	2949
26271 7590 05/01/2008 FULBRIGHT & JAWORSKI, LLP 1301 MCKINNEY SUITE 5100 HOUSTON, TX 77010-3095				
EXAMINER				
SAYALA, CHHAYA D				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
05/01/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/519,260

Applicant(s)

MCGRANE, SCOTT

Examiner

C. SAYALA

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/86)
Paper No(s)/Mail Date 6/29/2005
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anantharaman et al. ¹(US Patent 6197361) and McDaniel, III et al. ²(US Patent 6403142) in view of Prussin ³(US Patent 4053647) and further in view of Perret ⁴(US Patent 3689289) and Tandy ⁵(US Patent 4592917) taken with Ryan ⁶(US Patent 4702914) and Gluck et al. ⁷(US Patent 6228418).

References 1 and 2 show vegetarian dry kibbles were already known in the art at the time the invention was made. In fact, applicant admits as much in the specification at page 4, line 14. These patent do not teach or suggest the flavor-enhancing additive, spraying this after diluting, over the kibbles or the limitations at claims 5-7 or 12, 14-15.

Prussin teaches a flavor-enhancing, dilutable and sprayable, homogenized aqueous suspension that can be applied to dry kibbles typically made from cereal grains and lacking palatability. See col. 1, lines 15-25, and claims. The sprayable composition contains a proteinaceous substrate, but not the hydrolyzed vegetable protein (HVP) claimed.

Both Tandy and Perret teach an artificial chicken flavor. Perret states that the composition contains HVP, hexose such as glucose and minor amounts of xylose,

heating the mixture in the presence of water and heating it at 60-90⁰C. See col. 2, lines 45-66, col. 3, lines 29-35. Claim 1 states that hexose is an amount of 0.2-2 parts per part of HVP. See also claim 3. Tandy also teaches a combination of glucose and xylose as hexoses and pentoses (col. 2, lines 60-65) and HVP (col. 5, lines 53-65) that is said to give a more full-bodied flavor and to provide a matrix that carries the flavor and retains the intensity. This composition too is heated to the same extent. The patent states that by varying parameters of temperature, time and solvent, the organoleptic profile of the chicken flavorant can be altered from a taste of white meat or dark meat (see col. 4, lines 57+). At col. 6, lines 1-5, patentee states that the amount of HVP is 10-90%, and example 1 gives the other amounts. Perret shows the glucose amount in the examples, as amounts of dextrose (shown as equivalent to glucose at col. 3, line 29). To substitute the HVP and hexose and pentose (glucose and xylose) in Prussin's flavor composition, for its proteinaceous substrate, would have been obvious and to provide the Perret or Tandy composition as a spray would have been useful.

As for the use of garlic powder as a flavor in pet foods, and particularly in a veterinary sauce composition that includes sugar, Ryan teaches this aspect and states that the addition is useful because it acts as a prophylactic deterrent against fleas, etc. See abstract and claims. Gluck et al. teach the addition of garlic powder in an amount 0.5-0.7% along with dextrose, in a palatability enhancing composition for pet foods. See col. 6, lines 29-31. Such disclosure shows the usefulness of garlic powder and its use in a palatability-enhancing composition in pet foods, and to introduce such to the

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Perret or Tandy flavor composition would have been an obvious expedient to one of ordinary skill in the art at the time the invention was made.

Note that although the amount of xylose is not shown by Perret, and the glucose amounts are the same as claimed herein, as discussed above, taken together with amounts shown by Tandy, it would have been within the skill of the artisan to determine such amounts, since 1) xylose and HVP are used together by prior art, and 2) used for the same reason, i.e. artificial meat flavors. With regard to claims 5 &6, and 14-15, Prussin teaches an addition of 0.5-20 grams per pound of food. Although the amount of additive to be added to the kibble would be based on the overall nutrient content, and palatability to be introduced, Prussin provides typical amounts based on which, one of ordinary skill in the art would have known how to determine such amounts.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala whose telephone number is (571) 272-1405. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business

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Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. SAYALA/

Primary Examiner, Art Unit 1794